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Supreme Court, U.S.
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No. 94-1005

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1994

JOSEPH E. HARHAI,
Petitioner,

-vs-

THE HONORABLE GARY P. CARUSO, ET AL.,
Respondents

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR
THE THIRD CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Filed on Behalf of:
GARY FALATOVICH, RESPONDENT

H. REGINALD BELDEN, JR.
PA I.D. #05661

BELDEN, BELDEN, PERSIN,
JOHNSTON & ZUZIK
Belden Building
117 North Main Street
Greensburg, PA 15601
Phone: (412) 834-0300

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STATEMENT OF QUESTIONS PRESENTED FOR REVIEW

I. Where civil rights claims are made against a court-appointed guardian ad litem should certiorari be granted when this court has previously refused to grant it following a holding that the court-appointed guardian has absolute immunity?

II. Where RICO claims are made against a court-appointed guardian by the father of the ward on a theory that the guardian conspired with the mother of the ward, judges and lawyers to deprive the father of custody, should certiorari be granted to review a holding that the claimed injury is personal and does not involve the requisite business or property interest for a RICO claim?

STATEMENT OF THE CASE

The claims presented in this case arise from various domestic relations actions between the petitioner and his former wife, Jane Kaylor Hart, a respondent herein. These two parties were involved in a lengthy dispute before the Court of Common Pleas of Westmoreland County, Pennsylvania, concerning, inter alia, custody and support of their son. The litigation was lengthy and protracted, involving several different attorneys and judges over the passage of time. Eventually the Petitioner grew dissatisfied with the outcome of the proceedings and then initiated this lawsuit in the United States District Court for the Western District of Pennsylvania, alleging a variety of claims

against judges, attorneys, the court-appointed guardian of his son, a county agency, a private mental health institution and a probation officer, all of whom were involved in one way or another in the underlying domestic relations dispute. The original complaint alleged civil rights claims pursuant to 42 U.S.C. Sections 1983, 1985, 1986 and 1988, RICO claims pursuant to 18 U.S.C. Sections 1962 and 1964 and pendant state claims Motions to dismiss, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure were filed on behalf of all of the named defendants. An amended complaint was filed shortly thereafter, with leave of court. The contents and averments of the amended complaint varied little from the original complaint.

Once again, Rule 12(b)(6) motions to dismiss were filed on behalf of the various defendants. The Honorable William L. Standish of the United States District Court entered a memorandum and order dated January 7th, 1994, dismissing with prejudice the Sections 1985 and 1986 Civil Rights claims regarding the respondent, Gary A. Falatovich, they were dismissed on the basis of his absolute immunity. He also dismissed the RICO claims as to each of the defendants. As to the judges and Anthony Giunta, the county probation officer, the claims pursuant to 42 U.S.C. Sections 1983 and 1988 were also dismissed with prejudice. As to the remaining defendants, the Section 1983 and 1988 claims were dismissed without prejudice and the Court specifically instructed the plaintiff to set forth each material facts

upon which the petitioner based his claim that the various defendants conspired to deprive him of his constitutionally protected rights. The pendant state claims asserted against each of these defendants were dismissed without prejudice and the Court indicated that they would be reinstated if the petitioner filed an amended complaint setting forth the federal causes of action with the requisite specificity.

A second amended complaint was filed by the petitioner. It was nearly identical to the original and first amended complaints. The District Court then dismissed all of the remaining federal claims with prejudice, based upon the petitioner's failure to set forth a

cause of action upon which relief may be granted.

A timely appeal was taken by the petitioner to the United State Court of Appeals for the Third Circuit. In a judgment order dated September 7, 1994, the Court of Appeals affirmed the judgment of the District Court. The petitioner now seeks review of the above judgments entered by the Court of Appeals and the District Court in his petition for writ of certiorari.

ARGUMENT

The petitioner sets forth three reasons for which this court should grant the requested review:

(1) the district court incorrectly decided facts (Petition, p. 10);

(2) the district court applied the wrong law (Petition, p. 11); and

(3) the district court's judgment is wrong (Petition, p. 13).

As to each of the reasons, he simply sets forth the reasons for which he disagrees with the conclusions reached by the district court and affirmed by the court of appeals. He does not, however, state any reasons which are either special or important and, certainly, none which rise to the character sufficient to warrant a review by this court. It is simply impossible for this court to review every decision of a district court, or even a court of appeals, in which the losing party believes that the court incorrectly decided facts,

applied the wrong law, or issued a judgment which was wrong.

Review by this court must be limited to matters which are of the utmost importance to our society and the administration of justice in this country. Nothing raised in the petition for writ of certiorari under consideration even hints at rising to such a character.

Petitioner made two claims against respondent, Gary A. Falatovich: civil rights claims and a RICO claim.

With regard for the basis on which the civil rights claims were dismissed against Mr. Falatovich, the court-appointed guardian ad litem, this court has denied certiorari in cases in which

the same issues were raised. Myers v. Morris, 810 F.2d 1437 (8th Cir. 1987), cert. den., 484 U.S. 828, 108 S. Ct. 97, 98 L.Ed.2d 58 (1988). In that case, it was concluded that a court-appointed guardian ad litem enjoyed absolute immunity. Other circuits have so held. Ashbrook v. Hoffman, 617 F.2d 474 (7th Cir. 1980); Gardner by Gardner v. Parson, 874 F.2d. 131 (3d Cir. 1989); McCuen v. Polk County, Iowa, 893 F.2d 172 (8th Cir. 1990); Kurzawa v. Miller, 732 F.2d 1456 (6th Cir. 1984). No review by this court is necessary in this case as the facts do not differ.

With regard to the RICO claim against Mr. Falatovich, petitioner simply disagrees with the conclusion of the district court, affirmed by the court of

appeals, that he did not and could not allege injury to business or property requisite to the bringing of a RICO claim. His claims are personal. No review by this court of such a conclusion would be warranted. Further, none of the other requisite elements of a RICO action were set forth with reqisite specificity in the complaint or either of the ammended complaints, as was raised by the respondents in the District Court.

CONCLUSION

Nothing set forth in the Petition for Writ of Certiorari warrants it being granted nor, even, the expendiature of the time it has taken the respondents to respond to it, or for the court and its staff to read it.

There is no unsettled question of law nor is there a conflict among the circuits or between the federal courts and a state court of last resort.

The writ should not be granted.

Respectfully submitted;

H. REGINALD BELDEN, JR.
PA I.D. #05661

BELDEN, BELDEN, PERSIN, JOHNSTON & ZUZIK
Belden Building
117 North Main Street
Greensburg, PA 15601
Phone: (412) 834-0300

CERTIFICATE OF SERVICE

I, **H. REGINALD BELDEN, JR., ESQUIRE**, do hereby certify that three true and correct copies of the within **BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI** to the United States Supreme Court dated December 29th 1994, were served upon the following:

Peter P. Cherellia, Esquire
32 West Third Street
Greensburg, PA 15601
(attorney for Henry A. Hudson, Respondent)

Robert P. Boyer, Jr. Esquire
Three Gateway center
22nd Floor
Pittsburgh, PA 15222
(attorney for Westmoreland Mental Health Center)

Jon M. Lewis, Esquire
205 Coulter Building
Greensburg, PA 15601
(attorney for William J. Wiker, Respondent)

Maryellen Gallagher, Esquire
1515 Market Street
Suite 1414
Philadelphia, PA 19102
(attorney for Gary P. Caruso, John E. Blahovec, Charles E. Marker, Gilfert M. Mihalich and Joseph a. Hudock, Respondents)

David J. Singley, Esquire
501 Grant Building
Pittsburgh, PA 15219
(attorney for Westmoreland County Children's Bureau)

John K. Greiner, Esquire
117 North Main Street
Greensburg, PA 15601
(attorney for Anthony Giunta, Respondent)

Joseph E. Harhai, Pro Se
Box 47
Ruffsdale, PA 15679

H. Reginald Belden

H. REGINALD BELDEN, JR.
PA I.D. #05661